

# PART 4

## ADMINISTRATIVE MATTERS

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### 4.101 Contracting officer's signature.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer (s) have authority to bind the contractor (see specific requirements in 4.102 below).</p> <p>(b) <del>Each signed or reproduced copy of the signed contract or modification that is intended to have the same force and effect as the signed original shall be marked "DUPLICATE ORIGINAL."</del></p>	<p>Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart). [FAC 90-29]</p>

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### 4.201 Procedures.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall—</p> <p>(a) Distribute simultaneously one signed copy or reproduction of the signed contract <del>(see 4.101(b))</del>, to the contractor and the paying office;</p> <p>(b) When a contract is assigned to another office for contract administration (see Subpart 42.2), provide to that office—</p> <p>(1) One copy or reproduction of the signed contract and of each modification <del>(stamped "DUPLICATE ORIGINAL," see 4.101(b))</del>; and</p> <p>(2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur;</p> <p>(c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;</p>	<p>Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall—</p> <p>(a) Distribute simultaneously one signed copy or reproduction of the signed contract, to the contractor and the paying office;</p> <p>(b) When a contract is assigned to another office for contract administration (see Subpart 42.2), provide to that office—</p> <p>(1) One copy or reproduction of the signed contract and of each modification; and</p> <p>(2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur;</p> <p>(c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;</p>

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative contracting officer and mark the copy “FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY” (see 30.401(b));

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative contracting officer and mark the copy “FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY” (see 30.601(b)); [FAC 90-29]

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#### 4.304 Contract clause.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
The contracting officer shall insert the clause at 52.204-4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and contracts-	The contracting officer shall insert the clause at 52.204-4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and contracts <b>greater than the simplified acquisition threshold.</b> [FAC 90-27]

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[The following is an all new subpart pursuant to FAC 90-29]

### SUBPART 4.5 — ELECTRONIC COMMERCE IN CONTRACTING

Sec.

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#### 4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of the Federal Acquisition Computer Network (FACNET) as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

#### **4.501 Definitions.**

**ANSI X.12** means the designation assigned by the American National Standards Institute (ANSI) for the structure, format, and content of electronic business transactions conducted through Electronic Data Interchange (EDI). ANSI is the coordinator and clearinghouse for national standards in the United States.

**Electronic commerce (EC)** means a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques for accomplishing business transactions. The use of terms commonly associated with paper transactions (e.g., “copy”, “document”, “page”, “printed”, “sealed envelope” and “stamped”) shall not be interpreted to restrict the use of electronic commerce.

**Electronic data interchange (EDI)** means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

**Federal Acquisition Computer Network (FACNET)** means the Governmentwide Electronic Commerce/Electronic Data Interchange EC/EDI systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

**Full FACNET** means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), were entered into by the agency during the preceding fiscal year using FACNET.

**Governmentwide FACNET** means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), entered into by the executive agencies during the preceding fiscal year were made through full FACNET.

**Interim FACNET** means a contracting office has been certified as having implemented a capability to provide widespread public notice of, issue solicitations, and receive responses to solicitations and associated requests for information through FACNET. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

**Transaction Set** means the data that is exchanged to convey meaning between Trading Partners engaged in EC/EDI.

**Value-Added Network (VAN)** means an entity that provides communications services, electronic mailboxing and other communications services for EDI transmissions.

**Value-Added Service (VAS)** means an entity that provides services beyond communications to its customers. These services may range from translation and segregation of the data to complete turn-key business systems support for customers.

#### **4.502 Policy.**

(a) The Federal Government shall use FACNET whenever practicable or cost effective.

(b) FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchase requirements exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see 13.103(b)).

(c) Contracting officers may use FACNET for any contract action governed by the FAR, unless specifically exempted (see 4.506 and 13.106-1(a)(2)).

(d) Before using FACNET or any other method of electronic data interchange, the agency head shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

#### **4.503 Contractor registration.**

(a) In order for a contractor to conduct electronic commerce with the Federal Government, the contractor must provide registration information to the Central Contractor Registration.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

#### **4.504 FACNET functions.**

(a) FACNET will permit agencies to do the following electronically--

- (1) Provide widespread public notice of contracting opportunities, and issue solicitations;
- (2) Receive responses to solicitations and associated requests for information;
- (3) Provide widespread public notice of contract awards and issuance orders (including price);
- (4) Receive questions regarding solicitations, if practicable;
- (5) Issue contracts and orders, if practicable;
- (6) Initiate payments to contractors, if practicable; and
- (7) Archive data relating to each procurement action.

(b) FACNET will permit the private sector to do the following electronically —

- (1) Access notices of solicitations;
- (2) Access and review solicitations;
- (3) Respond to solicitations;
- (4) Receive contracts and orders, if practicable;
- (5) Access information on contract awards and issuance of orders; and
- (6) Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable.

#### **4.505 FACNET certification.**

##### **4.505-1 Interim certification.**

(a) A contracting office is considered to have implemented interim FACNET if —

(1) The contracting office — (i) Has implemented the FACNET functions described in 4.504(a)(1) and (2), and (b)(1), (2), and (3); and (ii) Issues notices of solicitations and receives responses to solicitations in a system having those functions;

(2) The contracting office can use FACNET for contracts, not otherwise exempted (see 4.506), that exceed the micro-purchase threshold but do not exceed the simplified acquisition threshold; and

(3) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, has certified to the Administrator of OFPP that the contracting office has implemented interim FACNET.

(b) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, shall notify the private sector via the Commerce Business Daily that a contracting office of the agency has certified interim FACNET. The notice shall establish a date after which it will be required that all responses to solicitations issued by the contracting office through FACNET, must be submitted through FACNET, unless otherwise authorized.

##### **4.505-2 Full certification.**

(a) An agency is considered to have implemented full FACNET if —

(1) The agency has implemented all of the FACNET functions described in 4.504;

(2) During the entire preceding fiscal year, more than 75 percent of the agency's eligible contracts not otherwise exempted (see 4.506), that exceeded the micro-purchase threshold, but did not exceed the simplified acquisition threshold were entered into via FACNET; and

(3) The head of the agency, with the concurrence of the Administrator of OFPP, has certified to the Congress that the agency has implemented full FACNET. For the Department of Defense, the certification shall be made by the Secretary of Defense for the Department as a whole.

(b) Eligible contracts do not include any class or classes of contracts that the Federal Acquisition Regulatory Council determines, after October 13, 1997, are not suitable for acquisition through FACNET.

#### **4.505-3 Governmentwide certification.**

The Federal Government is considered to have implemented Governmentwide FACNET if —

- (a) During the preceding fiscal year, at least 75 percent of eligible contracts entered into by executive agencies that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold were made via full FACNET; and
- (b) The Administrator of OFPP has certified implementation of Governmentwide FACNET to the Congress.

#### **4.505-4 Contract actions excluded.**

For purposes of calculating the percentage of FACNET use referred to in 4.505-2 and 4.505-3, actions issued against established contracts, such as delivery orders, task orders, and in-scope modifications, shall not be included.

#### **4.506 Exemptions.**

The following contracts are exempted from the use of FACNET as specified and shall not be considered when determining compliance with the requirements to implement FACNET:

- (a) Interim FACNET. (1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost-effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost effective to process via FACNET. Such determinations shall be centrally maintained at the contracting office. (2) Contracts that do not require notice under Subpart 5.2.
- (b) Full FACNET. Contracts awarded by a contracting office or a portion of a contracting office, if the office is exempted from use of FACNET by the head of the agency or the Secretary of Defense for the military departments and defense agencies. Any such exemption shall be based on a written determination that FACNET processing is not cost effective or practicable for the contracting office, or portions thereof. Determinations shall be maintained in the office of the senior procurement executive or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies..

#### **4.507 Contract actions using simplified acquisition procedures.**

Contracting officers shall refer to section 13.106 for evaluation and documentation requirements when awarding contracts using simplified acquisition procedures.

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#### 4.601 Record requirements.

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<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>***</p> <p>(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—</p> <p>(1) The reason under Subpart 6.3 for the use of such procedures; and</p> <p>(2) The identity of the organization or activity which conducted the procurement.</p> <p>(d) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.</p>	<p>***</p> <p>(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—</p> <p>(1) The reason under Subpart 6.3 for the use of such procedures; and</p> <p>(2) The identity of the organization or activity which conducted the procurement.</p> <p><b>(d) In addition to the information described in paragraphs (b) and (c) of this section, for procurements in excess of \$25,000, agencies shall be able to access information on the following from the computer file:</b></p> <p><b>(1) Awards to small disadvantaged businesses using either set-asides or full and open competition.</b></p> <p><b>(2) Awards to business concerns owned and controlled by women.</b></p> <p><b>(3) The number of offers received in response to a solicitation.</b></p> <p><b>(4) Task or delivery order contracts.</b></p> <p><b>(5) Contracts for the acquisition of commercial items. [FAC 90-31]</b></p> <p>(e) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.</p>

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#### 4.602 Federal Procurement Data System.

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<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public; (2) a means of measuring and assessing the impact of Federal contracting on the</p>	<p>(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public; (2) a means of measuring and assessing the impact of Federal contracting on the</p>

Nation's economy and the extent to which ~~small business concerns and small disadvantaged~~ business concerns are sharing in Federal contracts; and (3) data for other policy and management control purposes.

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Nation's economy and the extent to which **small, small disadvantaged and women-owned small** business concerns are sharing in Federal contracts; and (3) data for other policy and management control purposes. [FAC 90-32]

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#### 4.603 Solicitation provision.

The contracting officer shall insert the provision at 52.204-5, Women-Owned Business, in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold in Part 13, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. [FAC 90-32]

#### 52.204-5 Women-Owned Business.

As prescribed in 4.603, insert the following provision:

**WOMEN-OWNED BUSINESS (OCT 1995)**

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(b) *Definition.* "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women. [FAC 90-32]

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#### 4.702 Applicability.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
(a) This subpart applies to records generated under contracts that contain one of the following clauses: <del>(1) Examination of Records by Comptroller General (52.215-1).</del> (2) Audit—Sealed Bidding (52.214-26). (3) Audit—Negotiation (52.215-2).	(a) This subpart applies to records generated under contracts that contain one of the following clauses: <b>(1) Audit and Records—Sealed Bidding</b> (52.214-26). <b>(2) Audit and Records—Negotiation</b> (52.215-2) [FAC 90-31] <b>(3) Audit—Commercial Items (52.215-43).</b> [FAC 90-32] * * * *



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#### 4.703 Policy.

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##### *FAR as of FAC 90-25*

(a) Except as stated in 4.703(b), contractors shall make available books, records, documents, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 through 4.705-3, whichever of these periods expires first.

(b) Contractors shall make available the foregoing ~~documents~~ and supporting evidence for a longer period of time than is required in 4.703(a) if—

- (1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or
- (2) The contractor, for its own purposes, retains the foregoing ~~documents~~ and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.

(3) The contractor does not meet the original 90-day due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original 90-day due date.

~~(c) Contractors need not retain duplicate copies of records or supporting documents unless they contain significant information not shown on the record copy.~~

~~(d) Contractors may retain records in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and~~

##### *FAR as revised*

(a) Except as stated in 4.703(b), contractors shall make available records, **which includes** books, documents, **accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form**, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 through 4.705-3, whichever of these periods expires first.

(b) Contractors shall make available the foregoing **records** and supporting evidence for a longer period of time than is required in 4.703(a) if—

- (1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or
- (2) The contractor, for its own purposes, retains the foregoing **records** and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.

(3) The contractor does not meet the original 90-day due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original 90-day due date.

**(c) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:**

other written or graphic images, completely, accurately, and clearly. Data transfer, storage, and retrieval procedures shall protect the original data from alteration.

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems

(e) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

(d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data. [FAC 90-23]

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#### **4.706 [Reserved] Microfilming records.**

##### **4.706-1 General.**

—(a) Contractors may use microfilm (e.g., film chips, jackets, aperture cards, microprints, roll film, and microfiche) for recordkeeping, subject to the limitations in this subpart.

—(b) In the process of microfilming documents, the contractor shall also microfilm all relevant notes, worksheets, and other papers necessary for reconstructing or understanding the records.

—(c) The contractor shall review all microfilm before destroying the hard-copy documents to ensure legibility and reproducibility of the microfilm.

—(d) Unless earlier retirement of records is permitted by 4.705, or the administrative contracting officer agrees to a lesser retention period when the contractor has established adequate internal controls including continuing surveillance over the microfilm system, the contractor shall not destroy original records that have been microfilmed, until —

—(1) All claims under the contract are settled;

—(2) Eighteen months have passed since final payment; or

—(3) The time original records are required to be kept by other laws or regulations has elapsed.

##### **4.706-2 Filing and retrieval.**

—The contractor shall —

—(a) Maintain an effective indexing system to permit timely and convenient access to the microfilmed records by the Government;

- (b) Provide strict security measures to prevent the loss of microfilm and to safeguard classified information;
- (c) Store microfilm in a fireproof cabinet in an environment ensuring the safety of these records for the specified retention periods; and
- (d) Have adequate viewing equipment and provide printouts the approximate size of the original material.

#### **4.706-3 Quality control.**

- (a) Microfilm, when displayed on a microfilm reader (viewer) or reproduced on paper, must exhibit a high degree of legibility and readability.
- (b) The quality of the contractor's record microfilming process is subject to periodic review by the administrative contracting officer.

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#### **4.803 Contents of contract files.**

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>The following are examples of the records normally contained, if applicable, in contract files:</p> <p>(a) <i>Contracting office contract file.</i> * * * * *</p> <p>(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver. * * * * *</p> <p>(b) <i>Contract administration office contract file.</i> * * * * *</p> <p>(4) Cost and pricing data, Certificates of Current Cost or Pricing Data, cost or price analysis, and other documentation supporting contractual actions executed by the contract administration office. * * * * *</p>	<p>The following are examples of the records normally contained, if applicable, in contract files:</p> <p>(a) <i>Contracting office contract file.</i> * * * * *</p> <p>(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver, <b>or information other than cost or pricing data.</b> [FAC 90-321] * * * * *</p> <p>(b) <i>Contract administration office contract file.</i> * * * * *</p> <p>(4) Cost <b>or</b> pricing data, Certificates of Current Cost or Pricing Data, <b>or information other than cost or pricing data;</b> cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office. [FAC 90-32] * * * * *</p>